

7179
DECISION



*R. Feldman
Proc 1*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-191850

DATE: July 31, 1978

**MATTER OF: Murphy Anderson Visual Concepts--
Reconsideration**

DIGEST:

1. Prior decision dismissing protest as untimely filed is affirmed. Protester was required to file a protest with GAO within 10 working days of initial adverse agency action denying its protest. Although protester resubmitted its objections to procuring agency and requested additional information after agency denied its protest, the time required by the agency to respond to second submission is irrelevant and does not justify delay in protesting to GAO.
2. Where the record before GAO and protester's submissions indicate protest is untimely, GAO will render a decision without obtaining a report from procuring agency.
3. In view of disposition of protest by GAO as untimely filed, and protester's failure to raise protestable issue, initial request for conference was not granted. Request for conference on reconsideration is denied since no useful purpose would be served.

Murphy Anderson Visual Concepts, Inc. (Murphy Anderson) requests reconsideration of our decision in Murphy Anderson Visual Concepts, Inc., B-191850, June 15, 1978, 78-1 CPD 438 wherein we dismissed its protest as untimely filed and for failure to state an adequate basis for protest.

Murphy Anderson had written its congressional representative on March 8, 1978 requesting that a formal protest be lodged on grounds that the proposed awardee could not adequately perform the con-

tract. The firm also questioned whether the proposed procurement had received adequate publicity and whether the low bidder unfairly was furnished the prior contract price. On March 9, 1978, the congressional representative requested the Army to review the matter consistent with its rules and regulations. By letter of March 20, 1978, the Army replied that its review indicated no violation of such rules and regulations. This reply, received on March 29, 1978, was communicated to Murphy Anderson not later than April 1, 1978. Murphy Anderson then restated its objections in a letter of April 7, 1978, to the contracting officer.

Because Murphy Anderson filed its protest initially with the procuring agency through its congressional representative and did not protest here within 10 working days of initial adverse agency action on its protest, as required by 4 C.F.R. § 20.2 (a) (1977) of our Bid Protest Procedures, we held that Murphy Anderson's protest was untimely filed.

In its request for reconsideration, Murphy Anderson states that the Army contributed to the late filing of its protest with our Office, by delaying its response to the protester's letter of April 7 until April 18. Murphy Anderson argues that its April 7 protest also requested information and was sent to the Army in an effort to determine the factual basis of its protest. Citing Section 20.2 (b)(2) of our Bid Protest Procedures which requires that bid protests "shall be filed not later than 10 days after basis for protest is known or should have been known", Murphy Anderson contends that "the delays of the agency should not be a cause of the denial by timeliness of this appeal."

In our opinion, the time required by the agency to again respond to Murphy Anderson's objections and request for information is irrelevant. Within 10 working days of notification of initial adverse agency action Murphy Anderson was required by our

Bid Protest Procedures to file a protest with our Office if it intended to pursue the matter here. Instead the protester chose to resubmit its protest to the agency with a request for information. As we stated in our decision, such filing did not extend the 10 day limitation within which a protest may be filed with our Office. But see K-MCC, Inc. Consultants, B-190358, March 10, 1978, 78-1 CPD 194, where we considered a protest on the basis of information received pursuant to a freedom of information act request notwithstanding the firm's prior untimely protest concerning that procurement.

Murphy Anderson also objects to the fact that our decision was rendered without affording it the opportunity provided by section 20.3 of our Bid Protest Procedures (4 CFR § 20.3 (1977)) to comment on the contracting agency's report. However, where a protester's initial submission indicates the protest is untimely, is without legal merit or states a basis for protest which is not for consideration by this Office, we may render a decision or dismiss the matter without obtaining a report from the procuring agency. Afro-American Datanamics, Inc., B-190703, December 8, 1977, 77-2 CPD 448; What-Mac Contractors, Inc.--Reconsideration, B-187782, January 14, 1977, 77-1 CPD 34. In this case, we could determine whether Murphy Anderson's protest had been filed in a timely manner on the record before us without obtaining an agency report. Also, the protester had not presented valid grounds for protest. Therefore, we did not grant Murphy Anderson's request for a conference and we decline to do so now. No useful purpose would be served in light of our determination regarding the untimeliness of the protest and the failure to state an adequate basis for protest. See The Volpe Construction Co., Inc.--Reconsideration, B-189280, August 8, 1977, 77-2 CPD 93.

Murphy Anderson argues that our decision was premature and should not have been rendered until the factual background for its protest was discovered pursuant to its request to the Army for documents under the Freedom of Information Act 5 U.S.C. § 552. However, we found that the protest filed here did not present grounds for protest which were cognizable by our Office or which

contained legal merit warranting full development of the case. Therefore, we concluded that its protest did not fall within the exception to our timeliness requirements in section 20.2(c) of our Bid Protest Procedures for considering significant issues untimely raised or considering untimely protests for good cause. Even if Murphy Anderson's contentions had been more fully supported by additional information subsequently received from the agency, we would not consider the merits of its protest on the grounds presented.

Murphy Anderson also contends that we misconstrued its discussion regarding the publicity of this procurement. Even though its protest questioned the adequacy of public notice for this procurement, the protester states it was concerned with possible bias or favoritism by the agency toward a firm in California as indicated by the publication of the procurement in two California newspapers. In this same vein, Murphy Anderson argues that the agency's disclosure of pricing information without giving notice of that fact to it unfairly prejudiced its bidding posture.

We remain of the view that publication of this procurement in the Commerce Business Daily served as notice to all potential bidders and effectively eliminated any potential for favoritism. Any additional measures to publicize a procurement are matters of discretion and are not objectionable from the aspect of fairness. Furthermore, inasmuch as prior contracts and their prices are generally matters of public record, we fail to see how disclosure of such information without notice to the protester prejudiced Murphy Anderson.

We affirm our prior decision.

R. F. K. 112

Deputy Comptroller General
of the United States